

13-1496 DOLLAR GENERAL CORP. V. MS BAND OF CHOCTAW

DECISION BELOW: 746 F.3d 167

LOWER COURT CASE NUMBER: 12-60668

QUESTION PRESENTED:

In *Montana v. United States*, 450 U.S. 544, 565 (1981), this Court held that generally "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." The Court recognized as an exception to that rule that a "tribe may regulate, through taxation, licensing, *or other means*, the activities of nonmembers who enter consensual relationships with the tribe or its members." *Id.* (emphasis added).

The Court subsequently recognized in *Nevada v. Hicks*, 533 U.S. 353, 358 n.2 (2001), that it has "never held that a tribal court had jurisdiction over a nonmember defendant" in any context, so that it remains an "open question" whether tribal courts may ever exercise civil jurisdiction over nonmembers. In *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008), this Court granted certiorari to decide whether *Montana's* undefined "other means" include adjudicating civil tort claims in tribal court. However, the Court resolved the case on other grounds.

In this case, a divided panel of the Fifth Circuit held that tribal courts do have that jurisdiction. Five judges dissented from the denial of rehearing en banc. The case accordingly presents the issue the Court left open in *Hicks* and the Question the Court granted certiorari to decide in *Plains Commerce*:

Whether Indian tribal courts have jurisdiction to adjudicate civil tort claims against nonmembers, including as a means of regulating the conduct of nonmembers who enter into consensual relationships with a tribe or its members?

CERT. GRANTED 6/15/2015